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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

JUN 02 2014

Maine Energy Recovery Company
c/o Brian Oliver, Vice President
Casella Waste Systems
110 Main Street, Suite 1308
Saco, Maine 04072

City of Biddeford
Attn: John Bubier, City Manager
205 Main Street
Biddeford, Maine 04005

Re: PCB Risk-Based Disposal Approval under 40 CFR § 761.61(c)
Former Maine Energy Site
3-11 Lincoln Street
Biddeford, Maine

Dear Messrs. Olivier and Bubier:

This is in response to the Notification¹ by Maine Energy Recovery Company ("MERC") and the City of Biddeford ("the City") (together, "the Parties") to address cleanup of polychlorinated biphenyls (PCBs) on the former MERC property located at 3-11 Lincoln Street in Biddeford, Maine. Debris and fill materials located within and in close proximity to the former Boiler House area (hereinafter "the Site") contain PCBs that exceed the allowable PCB levels for *unrestricted use* under the federal PCB regulations at 40 CFR § 761.61(a).

The Parties have submitted a PCB risk-based disposal plan for *PCB remediation waste* under 40 CFR § 761.61(c) that includes the following:

- Remove identified *PCB remediation waste* (i.e., soil and debris) with greater than (">") 25 parts per million ("ppm") PCBs within the Site boundaries as identified on Figure 5 of the April 16, 2014 submittal;

¹ Information was submitted on behalf of the Parties by Summit Environmental Consultants, Inc. The information was provided to satisfy the notification requirement under 40 CFR § 761.61(c). Information was provided dated June 20, 2013 (Application for 40 CFR 761.61(c) Risk-Based Cleanup of Soil); February 18, 2014 (Response to December 16, 2013 EPA Comments); February 19, 2014 (Application for 40 CFR 761.61(c) Risk-Based Cleanup of Soil (revised)); April 16, 2014 (Application for 40 CFR 761.61(c) Risk-Based Cleanup of Soil (revised)); and May 30, 2014 (email clarification on MERC project contact). These submittals will be referred to as the "Notification."

- Conduct post-excavation verification sampling in the excavation areas to confirm that the PCB concentration is less than or equal to (" \leq ") 25 ppm;
- Install a compliant cap in accordance with § 761.61(a)(7) beneath a visual demarcation barrier and at least 3 to 4 feet of clean fill as shown on Figure 6 of the April 16, 2014 submittal;
- Dispose of PCB-contaminated wastes with greater than or equal to (" \geq ") 50 ppm PCBs at a TSCA-approved disposal facility or a RCRA hazardous waste landfill in accordance with § 761.61(a)(5)(i)(B)(2)(iii);
- Dispose of PCB-contaminated wastes with less than (" $<$ ") 50 ppm PCBs at a state-permitted non-hazardous waste landfill in accordance with § 761.61(a)(5)(i)(B)(2)(ii) or alternatively at a TSCA-approved disposal facility or a RCRA hazardous waste landfill in accordance with § 761.61(a)(5)(i)(B)(2)(iii); and,
- Record a deed notice to document the permitted uses, restricted uses, and obligations and conditions which must be maintained in accordance with § 761.61(a)(8) and the Maine Department of Environmental Protection ("MEDEP") requirements.

Based on its review, EPA has determined that the characterization sampling conducted at the Site is adequate for off-site disposal purposes, and that the verification sampling frequency is adequate to confirm PCB concentrations remaining at the Site. EPA finds that the proposed plan is acceptable and that the PCBs remaining at the Site beneath the clean cap will create no unreasonable risk of injury to public health or the environment. EPA applies this reasonable risk standard in accordance with the PCB regulations at 40 CFR § 761.61(c), and the Toxic Substances Control Act, at 15 USC § 2605(e).

The Parties may proceed with the cleanup in accordance with 40 CFR § 761.61(c); the Notification; and this Approval, subject to the conditions of Attachment 1. This Approval only addresses cleanup and disposal of the *PCB remediation waste* identified in the Notification. In the event that either the City and/or MERC identifies other PCB-contaminated wastes at the property subject to cleanup and disposal under the PCB regulations, it will be required to notify EPA and to clean up the PCB-contaminated wastes in accordance with 40 CFR Part 761 (see Attachment 1, Condition 1.)

This Approval does not release the Parties from any applicable requirements of federal, state or local law, including the requirements related to cleanup and disposal of PCB-contaminated soils and debris or other non-PCB contaminants under the MEDEP regulations.

Questions and correspondence regarding this Approval should be directed to:

Kimberly N. Tisa, PCB Coordinator (OSRR07-2)
United States Environmental Protection Agency
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912
Telephone: (617) 918-1527 / Facsimile: (617) 918-0527

EPA shall consider this project complete when it has received all submittals required under this Approval, including documents evidencing construction of the physical control (i.e., TSCA-compliant cap) and adoption of the deed restriction. Please be aware that upon EPA receipt and review of the submittals, EPA may request any additional information necessary to establish that the work has been completed in accordance with 40 CFR Part 761, the Notification, and this Approval.

Sincerely,

A handwritten signature in black ink, appearing to read "James T. Owens, III". The signature is fluid and cursive, with a large initial "J" and a stylized "O".

James T. Owens, III
Director, Office of Remediation & Restoration

Attachment 1: PCB Approval Conditions

cc: John Cressey, Summit
Nick Hodgkins, MEDEP
Jessica Dominguez, EPA Brownfields
File

ATTACHMENT 1

**PCB RISK-BASED DISPOSAL APPROVAL CONDITIONS
FORMER MAINE ENERGY PROPERTY BOILER HOUSE AREA ("the Site")
3-11 LINCOLN STREET
BIDDEFORD, MAINE**

GENERAL CONDITIONS

1. This Approval is granted under the authority of Section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2605(e), and the PCB regulations at 40 CFR Part 761, and applies solely to *PCB remediation waste* located at the Site as identified in the Notification and shown on Figure 5 of the April 16, 2014 submittal.²
 - a. In the event that either the City of Biddeford ("the City") or Maine Energy Recovery Company ("MERC" and together "the Parties") identifies other PCB-contaminated wastes at the property subject to cleanup and disposal under the PCB regulations, the City and/or MERC will be required to notify EPA and clean up the PCB-contaminated wastes in accordance with 40 CFR Part 761.
 - b. The City and/or MERC may submit a separate plan to address the PCB contamination or may modify the Notification to incorporate cleanup of the PCBs under this Approval in accordance with Condition 18.
2. The Parties shall conduct on-site activities in accordance with the conditions of this Approval and with the Notification.
3. In the event that the cleanup plan described in the Notification differs from the conditions specified in this Approval, the conditions of this Approval shall govern.
4. The terms and abbreviations used herein shall have the meanings as defined in 40 CFR § 761.3 unless otherwise defined within this Approval.
5. MERC must comply with all applicable federal, state and local regulations in the storage, handling, and disposal of all PCB wastes, including PCBs, PCB Items and decontamination wastes generated under this Approval. In the event of a new spill during response actions, the MERC shall contact EPA within 24 hours for direction on sampling and cleanup requirements.

² Information was submitted on behalf of the Parties by Summit Environmental Consultants, Inc. The information was provided to satisfy the notification requirement under 40 CFR § 761.61(c). Information was provided dated June 20, 2013 (Application for 40 CFR 761.61(c) Risk-Based Cleanup of Soil); February 18, 2014 (Response to December 16, 2013 EPA Comments); February 19, 2014 (Application for 40 CFR 761.61(c) Risk-Based Cleanup of Soil (revised)); April 16, 2014 (Application for 40 CFR 761.61(c) Risk-Based Cleanup of Soil (revised)); and May 30, 2014 (email clarification on MERC project contact). These submittals will be referred to as the "Notification".

6. MERC is responsible for the actions of all officers, employees, agents, contractors, subcontractors, and others who are involved in activities conducted under this Approval. If at any time the City or MERC has or receives information indicating that the City, MERC, or any other person has failed, or may have failed, to comply with any provision of this Approval, it must report the information to EPA in writing within 24 hours of having or receiving the information.
7. This Approval does not constitute a determination by EPA that the transporters or disposal facilities selected by MERC are authorized to conduct the activities set forth in the Notification. MERC is responsible for ensuring that its selected transporters and disposal facilities are authorized to conduct these activities in accordance with all applicable federal, state and local statutes and regulations.
8. This Approval does not: 1) waive or compromise EPA's enforcement and regulatory authority; 2) release the City or MERC from compliance with any applicable requirements of federal, state or local law; or 3) release the City or MERC from liability for, or otherwise resolve any violations of federal, state or local law.
9. Failure to comply with the Approval conditions specified herein shall constitute a violation of the requirement in 40 CFR § 761.50(a) to store or dispose of PCB waste in accordance with 40 CFR Part 761 Subpart D.

NOTIFICATION AND CERTIFICATION CONDITIONS

10. This Approval may be revoked if the EPA does not receive written notification from the Parties of their acceptance of the conditions of this Approval within 10 business days of receipt.
11. MERC shall notify EPA in writing of the scheduled date of commencement of on-site activities at least 1 business day prior to conducting any work under this Approval.
12. Prior to initiating onsite work under this Approval, MERC shall submit the following information:
 - a. a certification signed by its selected remediation contractor, stating that the contractor has read and understands the Notification, and agrees to abide by the conditions specified in this Approval;
 - b. a certification signed by the selected analytical laboratory, stating that the laboratory has read and understands the sample extraction, analytical and quality assurance requirements specified in the Notification and in this Approval; and,

- c. a contractor work plan, prepared and submitted by the selected contractor(s), detailing the procedures that will be employed for removal of PCB-contaminated wastes and for air monitoring during removal activities. This work plan should also include information on waste storage, handling, and disposal for each waste stream type and for equipment decontamination.

CLEANUP AND DISPOSAL CONDITIONS

- 13. The cleanup level for *PCB remediation waste* (e.g., soil, debris, fill) at the Site shall be less than or equal to (" \leq ") 25 parts per million ("ppm") and shall be covered with a compliant cap in accordance with 40 CFR § 761.61(a)(7).
 - a. *PCB remediation waste* samples shall be collected on a bulk basis (e.g., mg/Kg) and reported on a dry-weight basis. Verification sampling shall be conducted in accordance with the Notification frequency requirements and 40 CFR Part 761 Subpart O procedural requirements.
 - b. Chemical extraction for PCBs shall be conducted using Methods 3500B/3540C of SW-846 for solid matrices; and, chemical analysis for PCBs shall be conducted using Method 8082 of SW-846, unless another extraction or analytical method(s) is validated according to Subpart Q.
- 14. *PCB remediation waste* with greater than or equal to (" \geq ") 50 ppm PCBs shall be disposed of at a TSCA-approved disposal facility or a RCRA hazardous waste landfill in accordance with 40 CFR § 761.61(a)(5)(i)(B)(2)(iii).
- 15. *PCB remediation waste* with less than (" $<$ ") 50 ppm PCBs shall be disposed of at a state-permitted non-hazardous waste landfill in accordance with 40 CFR § 761.61(a)(5)(i)(B)(2)(ii) or alternatively at a TSCA-approved disposal facility or a RCRA hazardous waste landfill in accordance with 40 CFR § 761.61(a)(5)(i)(B)(2)(iii).
- 16. All PCB waste (regardless of concentration) generated as a result of the activities described in the Notification, excluding any decontaminated materials, shall be marked in accordance with 40 CFR § 761.40; stored in a manner prescribed in 40 CFR § 761.65; and, disposed of in accordance with 40 CFR § 761.61(a)(5), unless otherwise specified below:
 - a. Decontamination wastes and residues shall be disposed of in accordance with 40 CFR § 761.79(g).
 - b. Moveable equipment, tools, and sampling equipment shall be decontaminated in accordance with either 40 CFR § 761.79(b)(3)(i)(A), § 761.79(b)(3)(ii)(A), or § 761.79(c)(2).

- c. PCB-contaminated water generated during decontamination or dewatering shall be decontaminated in accordance with 40 CFR § 761.79(b)(1) or disposed of under 40 CFR § 761.60.

INSPECTION, MODIFICATION AND REVOCATION CONDITIONS

- 17. The City and MERC shall allow any authorized representative of the Administrator of the EPA to inspect the Site, to inspect records, and to take samples as may be necessary to determine compliance with the PCB regulations and this Approval. Any refusal by the City or MERC to allow such an inspection (as authorized by Section 11 of TSCA) shall be grounds for revocation of this Approval.
- 18. Any proposed modification(s) in the plan, specifications, or information in the Notification must be submitted to EPA no less than 14 calendar days prior to the proposed implementation of the change. Such proposed modifications will be subject to the procedures of 40 CFR § 761.61(a)(3)(ii).
- 19. Any departure from the conditions of this Approval without prior, written authorization from the EPA may result in the revocation, suspension and/or modification of the Approval, in addition to any other legal or equitable relief or remedy the EPA may choose to pursue.
- 20. Any misrepresentation or omission of any material fact in the Notification or in any records or reports may result in the EPA's revocation, suspension and/or modification of the Approval, in addition to any other legal or equitable relief or remedy the EPA may choose to pursue.
- 21. Approval for these activities may be revoked, modified or otherwise altered: if EPA finds a violation of the conditions of this Approval or of 40 CFR Part 761, including EPA's PCB Spill Cleanup Policy, or other applicable rules and regulations; or, if EPA finds that these activities and/or the PCBs remaining at the Site present an unreasonable risk of injury to public health or the environment.

RECORDKEEPING AND REPORTING CONDITIONS

- 22. MERC shall prepare and maintain all records and documents required by 40 CFR Part 761, including but not limited to the records required under Subparts J and K, and shall submit same to the City. A written record of the cleanup and the analytical sampling shall be established and maintained by the City in one centralized location until such time as EPA authorizes, in writing, an alternative disposition for such records. All records shall be made available for inspection by authorized representatives of EPA.

23. Within sixty (60) days of completion of the cleanup activities described in the Notification and authorized by this Approval, and as required under 40 CFR § 761.61(a)(8)(i)(B), the City shall submit to EPA a certification that it has recorded the notation on the deed as required under 40 CFR § 761.61(a)(8)(i)(A). A copy of the notation on the deed must also be submitted.
- a. In the event that an Environmental Covenant ("EC") is required pursuant to the Maine Department of Environmental Protection regulations, the timeline for recording this deed notation may be modified in order to incorporate the Site under the EC if:
- (1) the City notifies EPA, in writing, prior to elapse of the 60-day deadline; and,
 - (2) the City provides an estimated schedule for submittal of a draft EC for EPA review and approval.
24. MERC shall submit a final report in both hard copy and electronic format to EPA within 60 days of completion of the activities authorized under this Approval and shall submit same to the City. At a minimum, this final report shall include: a short narrative of the cleanup and disposal activities with photo-documentation; characterization and verification sampling analytical results; copies of the accompanying analytical chains of custody; field and laboratory quality control/quality assurance checks; an estimate of the quantity of PCB waste disposed of and the size of the remediated area(s); copies of manifests and bills of lading; and copies of certificates of disposal or similar certifications issued by the disposer.
25. Required submittals shall be mailed to:
- Kimberly N. Tisa, PCB Coordinator
United States Environmental Protection Agency
5 Post Office Square, Suite 100
Mail Code: OSRR07-2
Boston, Massachusetts 02109-3912
26. No record, report or communication required under this Approval shall qualify as a self-audit or voluntary disclosure under EPA audit, self disclosure or penalty policies.

END OF ATTACHMENT 1